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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Decision adopted by the Committee under article 14 of the Convention, concerning communication No. 59/2016*, **

Communication submitted by:	Anne Nuorgam et al. (represented by counsel, Martin Scheinin)
Alleged victims:	The petitioners
State party:	Finland
Date of the communication:	14 March 2016 (initial submission)
Date of the present decision	7 May 2018
Subject matter:	Right to vote in elections to the Sami Parliament
Substantive issue:	Discrimination on the ground of ethnic origin
Procedural issues:	Jurisdiction of the Committee; victim status; exhaustion of domestic remedies
Articles of the Convention	1 and 5 (a), (c) and (e)

1. The 23 petitioners of the communication dated 14 March 2016 are Anne Nuorgam (Head of the Human Rights Unit of the trans-border association Saami Council); Maria Sofia Aikio (cultural non-governmental organization (NGO) activist, Ohcejohka, Finland); Pekka Aikio (Association of Sami Reindeer Herders, Vuotso, Sodankylä, Finland); Niillas Beaska (fisherman, Chairperson of the Norwegian Sami Association, Deatnu, Norway); Björg Bonk (Sami People's Association, Samenes Folkeforbund, Norway); Andrei Danilov (Member of Saam Sobar, Russian Federation); Tatjana Egorova (Barents Indigenous Peoples Office, Murmansk, Russian Federation); Hartvik Hansen (fisherman, Deatnu, Norway); Ida-Maria Helander (private childminder, Rovaniemi Sami Society, Rovaniemen saamelaisyhdistys ry, Rovaniemi, Finland); Aslak Holmberg (teacher, Finnish Sami Youth, Suomen saamelaisnuoret ry, Finland); Áile Javo (President of the Saami Council, Karasjok, Norway); Jevgenji Jushkov (acting Secretary General, Lujári/Loverezo village, Russian Federation); Mirka Kelahaara (private childminder, Rovaniemi Sami Society, Rovaniemen saamelaisyhdistys ry, Rovaniemi, Finland); Åsa Larsson Blind (Swedish Sami Reform Fund, Svenska Samernas Riksförfund, Övre Soppero, Sweden); Jouni Lukkari (reindeer herder, Saami Council, Anár, Finland); Juhani Länsman (reindeer herder, Inari, Finland); Ristenrauna Magga (Chairperson of the Sami National Association, Eadonat, Finland); Piia Nuorgam (PhD researcher, Rovaniemi, Finland); Outi Paadar (student, Rovaniemi Sami

* Adopted by the Committee at its ninety-fifth session (23 April–11 May 2018).

** The following members of the Committee participated in the examination of the present communication: Silvio José Albuquerque e Silva, Noureddine Amir, Alexei S. Avtonomov, Marc Bossuyt, José Francisco Cali Tzay, Chinsung Chung, Fatimata-Binta Victoire Dah, Bakari Sidiki Diaby, Rita Izsák-Ndiaye, Keiko Ko, Gun Kut, Yanduan Li, Nicolás Marugán, Gay McDougall, Pastor Elías Murillo Martínez, Verene Albertha Shepherd.

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Society, Rovaniemen saamelaisyhdistys ry, Rovaniemi, Finland); Gunn-Britt Retter (Chairperson Nesseby Sameforening — Unárgga Sámi Searvi, Unjárga, Norway); Ellen Inga Turi (PhD researcher, Saami Council, Guovdageaidnu, Norway); Nils-Henrik Valkeapää (Johtti Sápmelaččat ry, Enontekiö, Finland) and Samuel Valkeapää (teacher, Johtti Sápmelaččat ry, Inari, Finland). They allege that Finland has violated their rights under articles 1 and 5 of the Convention. They are represented by Martin Scheinin. Finland made the declaration under article 14 of the Convention on 16 November 1994.

Facts as submitted by the petitioners

2.1 The petitioners are members of the indigenous Sami community and include citizens of Finland, Norway, Russian Federation and Sweden. All of them submit the communication as "affected Sami individuals" and some of them submit it on behalf of different Sami associations to which they belong, as well as on behalf of their member.[1]

2.2 The petitioners indicate that on 30 September 2015, the Supreme Administrative Court of Finland intervened in the course of the then ongoing elections to the Sami Parliament, which were set to close on 4 October 2015, through the inclusion of 93 new persons on the electoral register against the will and decisions of the competent organs of the Sami Parliament, namely the Electoral Board and, as a first instance of appeal, the Executive Board.[2] On 7 October 2015, the Electoral Board announced the results of the elections. Several Sami individuals, including some of the petitioners,[3] filed petitions against the results,[4] stating that the intervention of the Supreme Administrative Court had distorted the will of the Sami people and requesting that new elections be held. On 18 November 2015, the Executive Board, basing itself on the petitions received, decided that new elections should be held. This decision could be appealed before the Supreme Administrative Court. Some of the 93 individuals included in the list of voters appealed the Executive Board's decision.[5]

2.3 On 13 January 2016, the Supreme Administrative Court quashed the Executive Board's decision to hold new elections. The election results announced on 7 October 2015 therefore became final.[6] Since then, the Sami Parliament has been operating in the composition determined by those elections.

2.4 The petitioners indicate that the Supreme Administrative Court is the highest instance in electoral matters. They therefore have no domestic remedies available to address the alleged violations; it is not possible to challenge, even on constitutional grounds, the decisions of the Supreme Administrative Court. The petitioners also indicate that the Supreme Administrative Court does not have a single Sami judge.

2.5 The petitioners further argue that the fact that the President of the Sami Parliament of Finland, Tiina Sanila-Aikio, submitted a complaint to the Human Rights Committee on a similar matter on 2 October 2015[7] does not affect the competence of the Committee on the

[1] See para. 1.

[2] The petitioners indicate that the 93 persons were included in the electoral register through 93 different rulings. They further indicate that only four of the rulings were published in the Court's yearbook and that the remaining 89 rulings are referred to in a Court press release.

[3] The petitioners do not provide further information on this issue.

[4] The petitioners do not specify to whom such petitions were presented.

[5] The petitioners do not provide further information on this issue.

[6] The petitioners have provided a copy of this decision in Finnish.

[7] The President of the Sami Parliament is not a petitioner in the present communication. The communication submitted to the Human Rights Committee (*Sanila-Aikio v. Finland*) CCPR/C/119/D/2668/2015, was deemed admissible on 28 March 2017. The Human Rights Committee considered that in her individual capacity Ms. Sanila-Aikio could be affected by issues concerning the functioning of the Parliament and the elections thereto, and that she was not therefore prevented from submitting a communication to the Committee under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, to the extent that she claimed violations of her individual rights. The Committee also noted that, as a member of the Sami indigenous community, Ms. Sanila-Aikio has the right to enjoy her own culture, including in community with other Sami, and that the Sami Parliament is indisputably the institution that guarantees Sami linguistic and cultural self-government within the Sami homeland area. The

Elimination of Racial Discrimination regarding the present communication because: (a) the two complaints do not refer to the same matter;[8] (b) in the present communication, the petitioners are acting in their own name to defend their rights and interests, and cannot be deprived of their right to present individual communications to international bodies; (c) even if the Committee considered that the petitioners who are Finnish Sami are covered by the communication submitted by Ms. Sanila-Aikio to the Human Rights Committee, that communication would not cover the associations, which are legal persons, that have submitted the present communication, or the rights of the Finnish Sami individuals in their capacity as members of such associations; and (d) those petitioners who are from countries other than Finland are not covered by the complaint submitted by Ms. Sanila-Aikio, as she has not sought to act on behalf of the Sami in neighbouring countries to Finland. The effects of the Supreme Administrative Court's rulings upon them are also not covered by Ms. Sanila-Aikio's complaint.

The complaint

3.1 The petitioners indicate that they and the members of the associations they represent, have been subject to violations of their rights as individual members of the indigenous Sami people who constitute a group of distinct ethnic origin under the Convention, both within Finland and in a broader geographic area covering regions in Norway, the Russian Federation and Sweden. They allege that the 93 Supreme Administrative Court rulings, dated 30 September 2015, which included 93 additional individuals on the Sami electoral register, and the ruling by the same Court of 13 January 2016 declaring that the election results of 7 October 2015 were final (hereafter "the rulings"), violate article 1 of the Convention. The rulings indeed have the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life regarding the petitioners, as well as all the members of the associations they represent, as a group of individuals. In this regard, the petitioners refer to paragraphs 1 and 2 of the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples, in which the Committee reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

3.2 The petitioners further indicate that the rulings by the Supreme Administrative Court represent a major step to nullify the right of the Sami people to linguistic and cultural autonomy. They consider that by including persons not recognized as Sami on the Sami Parliament electoral register the rulings have promoted the inclusion of individuals who are not fully committed to the defence of indigenous Sami rights but who are supporting the State party's positions in Parliament. They consider that this situation will gradually result in the forced assimilation of the Sami people into the mainstream population in violation of article 1 of the Convention, as well as sections 17.3 and 121.3 of the Constitution of Finland, [9] which aim to address the historical discrimination, dispossession and disadvantage of the Sami people.[10] The petitioners indicate that an example of this occurred in 2015 when the Government presented its bill on the Forestry Agency to the Parliament of Finland and deleted all provisions aiming at the protecting the Sami people against forestry and any other commercial activity using public land and waters within the Sami homeland.

Committee therefore considered that decisions taken by Finnish State institutions, which have an impact on the composition of the Sami Parliament and the equal representation of the Sami, can impact the right of individual members of the Sami community to enjoy their culture and use their language in community with the other members, and their right to equality before the law.

[8] The petitioners do not provide further information on this issue.

[9] Section 17.3 states: "The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act". Section 121.3: "Provisions on self-government in administrative areas larger than a municipality are laid down by an Act. In their native region, the Sami have linguistic and cultural self-government, as provided by an Act."

[10] The petitioners refer to the Committee's general recommendation No. 23 (paras. 3–4): "Indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms ... Consequently, the preservation of their culture and their historical identity has been and still is jeopardized."

They consider that this demonstrates how crucial it is to protect Sami people through an autonomous and vocal Parliament, as their means of livelihood and traditions are threatened by the plans to remove the Forestry Agency from governmental and parliamentary control towards a further privatization of its activities, including on public lands within the Sami homeland.

3.3 The petitioners indicate that the move towards forced assimilation started in 2011, when the Supreme Administrative Court included some individuals on the Sami electoral register under a judicial construct known as an "overall consideration", replacing the explicit existing criteria for Sami membership.[11] The petitioners consider that this tendency will continue, as many relatives of the 93 persons included in the electoral register by the rulings will, in turn, request their inclusion for the next elections, which are due to be held in 2019. The election results will therefore continue to be affected by this situation and will result in the takeover of the Sami Parliament by members of the mainstream population. The risk of forced assimilation of the Sami into the Finnish population is aggravated by the fact that the Sami constitute a numerical minority even within their homeland.[12]

3.4 The petitioners also consider that the rulings constitute a violation of the State party's obligations under article 5 (a), (c) and (e) of the Convention. Regarding article 5 (a), they affirm that by departing from the wording of section 3 of the Act on the Sami Parliament (Act No. 974/1995), which contains the definition of who is to be regarded as a Sami for the purposes of being allowed to vote in Sami parliamentary elections, the Supreme Administrative Court has ignored the requirements of legality, foreseeability, non-arbitrariness and non-discrimination. Section 3 states: "A Sami means a person who considers himself a Sami provided: (1) that he himself or at least one of his parents or grandparents has learned Sami as his first language; (2) that he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (3) that at least one of his parents has or could have been registered as an elector for an election to the Sami Delegation or the Sami Parliament."

3.5 The petitioners argue that section 3 requires a combination of an individual's self-identification as Sami, and the presence of at least one of the objective criteria mentioned in subsections 1–3 of section 3. However, the interpretation made by the Supreme Administrative Court gave preference to an "overall consideration" over the objective criteria established by the law,[13] thereby violating the petitioners' right to equal treatment before the tribunals and all other organs administering justice (art. 5 (a) of the Convention). Due to the indeterminacy of this "overall consideration", the Court's decisions have resulted in arbitrariness and discrimination, with identical cases being treated differently and significant differences between various situations being ignored by granting voting rights to dozens of individuals who do not meet any of the three criteria specified in the aforementioned Act. Given that a further 89 rulings also issued on the same day did not order inclusion on the electoral register, the 93 rulings that did admit the individuals concerned to the register amount to discrimination and arbitrariness. There are cases where, for instance, siblings have received rulings with opposite outcomes. In the Enontekiö municipality, all applicants whose family name is Vieltojärvi were admitted, while those whose family name is Keskitalo were rejected, even though the two families share genealogy.

3.6 The petitioners further indicate that the State party has violated article 5 (c) of the Convention, as the State's intervention in the operation of the Sami Parliament relates directly to Sami political participation, through the elections of the main organ of Sami autonomy. They affirm that while Sami individuals who are Finnish citizens are able to vote in national parliamentary elections, they comprise such a small minority that there are no Sami members of the Finnish Parliament. The elections to the Sami Parliament are therefore one of the only means for Sami individuals to enjoy their rights to participate in

[11] See para. 3.4.

[12] The petitioners indicate that under Finnish law there is a Sami homeland in the northernmost part of the country, namely the municipalities of Enontekiö, Inari and Utsjoki and the north of the Sodankylä municipality.

[13] See para. 3.3.

public affairs. In addition, as the Sami Parliament has powers in respect of cross-border issues,[14] the intervention of the State party in the Sami Parliament also affects the enjoyment of the rights of Sami citizens of Sweden, Norway and the Russian Federation under article 5 (c) of the Convention.

3.7 The petitioners also consider that the rulings have violated their rights under article 5 (e) of the Convention, as the gradual takeover of the Sami Parliament by the mainstream Finnish population would have an adverse effect on the exercise and enjoyment of the economic, social and cultural rights of the Sami people in Finland, as well as across national borders where the Sami people reside. They argue that giving preference to the "overall consideration" over section 3 of the Act on the Sami Parliament has entailed a move away from the Sami language, and that their linguistic rights have thus been violated, in particular given the role of the Sami language as the main aspect of cohesion across national borders. They consider that the linguistic rights protected by article 5 (e) of the Convention have therefore been violated not only in respect of the Sami individuals who are citizens of Finland, but also in respect to those who are nationals or residents of Norway, the Russian Federation or Sweden.

3.8 The petitioners further indicate that this is not the first time that the State party has created obstacles to the full enjoyment of the rights under article 5 (e) of the Convention. For example, any national of the European Union or the European Economic Area is allowed to engage in reindeer herding in northern Finland, while the right to herd reindeer is a distinct right of the Sami in Sweden and Norway. As a result, in Finland, the majority of the reindeer are owned and raised by non-Sami, who often use methods that do not respect the Sami traditions.

3.9 The petitioners further consider that through its rulings of 30 September 2015, the Supreme Administrative Court has refused to acknowledge its own earlier error of 2011,[15] even though that error was highlighted by the Committee in its concluding observations of 2012, in which the Committee recommended that in defining who is eligible to vote for Members of the Sami Parliament, the State party accord due weight to the rights of the Sámi people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation.[16] The petitioners further refer to the Committee's concluding observations of 2009, in which the Committee recommended that the State party give more adequate weight to self-identification by individuals concerned, as indicated in the Committee's general recommendation No. 8 (1990).[17] According to the petitioners, general recommendation No. 8 was misunderstood by the Supreme Administrative Court, which instead of applying a generous interpretation of each of the three alternative criteria contained in section 3 of the Act on the Sami Parliament for recognizing a person as Sami, departed from the law in some cases and replaced the law and the opinion of the Sami themselves with an "overall consideration", which resulted in the registration of some members of the Finnish mainstream population as voters in Sami elections. The petitioners consider that this is not what the Committee had meant when it recommended that the State party give adequate weight to self-identification by individuals concerned.

3.10 The petitioners also indicate that the Supreme Administrative Court had been warned of its error of 2011, as the Electoral and Executive Boards of the Sami Parliament conducted a thorough process to determine case-by-case whether a person met at least one of the alternative criteria established by section 3 of the Act on the Sami Parliament, and informed the Court of such analysis. The Court had continued with this tendency, however, and issued the 93 rulings on 30 September 2015. The petitioners indicate that in at least 53 out of the 93 rulings, the Court included a new voter on the electoral register based on the "overall consideration", without demonstrating that he or she fulfilled the three criteria established by law. In a smaller group of cases, the new voter was registered because of a family tie with a person who had been admitted to the electoral register in 2011 in

[14] The petitioners do not provide further information on this issue.

[15] See para. 3.3.

[16] See CERD/C/FIN/CO/20-22, para. 12.

[17] See CERD/C/FIN/CO/19, para. 13.

application of the "overall consideration" by the Court. The petitioners further argue that in its reasoning of the 93 rulings, the Court allowed the Committee's concluding observations of 2012 to be overruled by a statement issued in 2014 by the Committee on Constitutional Law of the Parliament of Finland that had ignored the Committee's concluding observations.[18]

State party's observations on admissibility

4.1 On 14 October 2016, the State party provided its observations on the admissibility of the communication. It indicates that the Sami people are the only indigenous people in Finland and that they have their own language,[19] culture, traditions and livelihoods, and refers to sections 17 (3) and 121 (4) of the Constitution that safeguard their rights.[20] The State party also indicates that the Sami Parliament is an independent institution and a legal person under public law, which does not safeguard the public interest as such, but which promotes the general interests of the Sami people.

4.2 The State party challenges the admissibility of the petitioners' claims on various grounds. It notes that the communication was submitted by Ms. Nuorgam, as a Sami individual and on behalf of the members of the Saami Council, a non-governmental organization; and that the other 22 petitioners submitted the communication as Sami individuals, and many of them also submitted it on behalf of a Sami association and its members. The State party indicates that the petitioners have not complied with rule 91 (b) of the Committee's rules of procedure, as written authorization to act on behalf of these persons has not been submitted to the Committee.

4.3 Furthermore, the State party considers that, as the current president of the Sami Parliament, Ms. Sanila-Aikio, has presented a communication to the Human Rights Committee concerning exactly the same matter as the present communication, all Sami who are Finnish citizens, including the petitioners of the present communication, should be considered to be represented by her as she is their legitimate representative. The same matter cannot be examined by two treaty bodies simultaneously. Furthermore, the State party is not aware of whether the Sami Parliament has authorized two of its members, Ms. Nuorgam and Mr. Holmberg,[21] who are petitioners in the present communication, to submit a communication on the same matter to another Committee.

4.4 The State party also submits that the authors have not complied with article 14 (7) (a) of the Convention and rule 91 (e) of the Committee's rules of procedure on the exhaustion of domestic remedies. It notes that the petitioners consider that their rights under articles 1 and 5 of the Convention have been violated by the 93 rulings of the Supreme Administrative Court of 30 September 2015, as well as by the ruling issued by the same court on 18 January 2016. The rulings, however, pertained not only to the 93 persons who were authorized to vote in the Sami elections, but also to 182 others, who the Court did not consider eligible to vote. The State party indicates that those who the Court ruled against had appealed the 93 rulings of 30 September 2015 and that the petitioners of the present communication were not part of those proceedings. The State party therefore considers that they have not exhausted all available domestic remedies and that the communication constitutes an *actio popularis*.

4.5 In addition, the State party states that, despite the fact that the Supreme Administrative Court is the highest domestic appellate court for administrative matters and that its decisions cannot be appealed, it was possible to request the Supreme Administrative Court to annul its decision through an extraordinary appeal. The State party indicates that the petitioners have not exhausted this remedy.

[18] No further information is provided in that regard.

[19] The State party indicates that according to the Sami Language Act (1086/2003), the Sami have the right to use their own language before the courts and other authorities.

[20] See para. 3.2.

[21] The State party notes that on 7 October 2015, the Electoral Board of the Sami Parliament appointed Ms. Nuorgam and Mr. Holmberg as members of the Sami Parliament from 1 January 2016 to 31 December 2019.

4.6 The State party also considers that the petitioners are claiming indirect or hypothetical violations of the Sami people's rights in general and not violations of their individual rights, as they have not been able to demonstrate having been directly affected by the alleged violations of articles 1 and 5 of the Convention. The State party therefore considers that the communication should be declared inadmissible for lack of substantiation. Furthermore, it considers that the communication is premature, as the alleged violations are purely hypothetical and have not taken place.

4.7 The State party states that, in its rulings, the Supreme Administrative Court has thoroughly and extensively assessed the special status and rights of the Sami indigenous people in the light of relevant international human rights obligations, including those emanating from the Convention.

4.8 Finally, the State party submits that it is not for the Committee to re-evaluate the facts that have led a national court to adopt a decision, or to question the findings and conclusions made by a national court.

Petitioners' comments on the State party's observations

5.1 On 20 March and 22 June 2017, the petitioners provided their comments on the State party's observations on admissibility. Regarding the State party's argument that they did not submit written authorizations from all the petitioners, they indicate that they had stated in their complaint that they would provide these if requested to do so, and provide copies of 23 written authorizations. [22] The petitioners reiterate that these written authorizations are given by 23 Sami individuals acting in their individual capacity as affected Sami and that many of them act on behalf of a named group of individuals as understood under article 14 of the Convention.[23]

5.2 Regarding the State party's affirmation that it is not aware if the petitioner, Ms. Nuorgam, who is a member of the Sami Parliament, was authorized to submit the present communication to the Committee, the petitioners indicate that this communication has not been submitted by Ms. Nuorgam on behalf of the Sami Parliament in Finland, but as an affected individual, and also on behalf of the Saami Council, which is a cross-border non-governmental organization. Several of her co-petitioners are also board members of the Saami Council, which constitutes a group of individuals as understood under article 14 of the Convention.

5.3 The petitioners consider that the State party's argument that the present communication refers to the same matter as referred to in the communication submitted to the Human Rights Committee is incorrect. There is no provision in article 14 of the Convention or rule 91 of the Committee's rules of procedure preventing petitions relating to the same matter from being submitted to more than one treaty body. Even if such a rule were applicable, the matter covered by the present communication is not the same as the one covered by the communication submitted to the Human Rights Committee. The petitioners consider that, even though the two communications both relate to Supreme Administrative Court of Finland's rulings of 30 September 2015 and both refer to the violations of Sami rights caused by these rulings, the legal provisions invoked in the two complaints are clearly different as they relate to two different treaties. The complainants in the two cases are also different.

5.4 The petitioners add that, although it may be correct that Ms. Sanila-Aikio, as the elected President of the Sami Parliament of Finland, has the authority to represent all Sami in Finland, it is also correct that such authority cannot take away the right of any Sami individual to submit a separate case before any another international body. Furthermore, Ms. Sanila-Aikio has not made any claim that she would represent the Sami non-governmental organizations that have been named by Ms. Nuorgam and her co-petitioners in the present

[22] The written authorizations comprise 19 powers of attorney and four emails indicating each petitioner's support for the communication and accepting the representation by Mr. Scheinin before the Committee.

[23] Besides the members of the Saami Council (see para. 5.2), the petitioners do not specify which petitioners are acting on behalf of a group of individuals.

communication and constitute a group of individuals in the meaning of article 14 of the Convention. Moreover, while Ms. Sanila-Aikio's representation authority covers Sami individuals who are citizens of Finland, the present communication has also been submitted on behalf of Sami individuals and groups of individuals in Norway, the Russian Federation and Sweden, insofar as their rights have been affected by the exercise of jurisdiction by Finland.

5.5 Regarding the State party's argument that the petitioners have not exhausted all available domestic remedies, the petitioners state that, as recognized by the State party itself, the Supreme Administrative Court is the highest judicial instance in electoral matters. No other judicial remedies are therefore available to address the alleged violations. As per the State party's statement that the petitioners could have used an extraordinary remedy to seek the annulment of the decisions by the Supreme Administrative Court itself, the petitioners consider that such a requirement is unreasonable and does not reflect the exhaustion of domestic remedies as understood under international law. Moreover, they reiterate that the fact that the Supreme Administrative Court in its ruling of 13 January 2016 quashed the decision of the Sami Parliament to hold new elections made clear its position to not reconsider its rulings of 30 September 2015.

5.6 The petitioners further indicate that the State party seems to have misunderstood their complaint, as it appears to suggest that they would seek to represent the 89 individuals who were not included on the Sami electoral register and whose appeals were rejected by the Supreme Administrative Court. The petitioners have made no claim to represent those individuals. The communication refers to the interference by the State party in the rights and affairs of the Sami people through the inclusion of non-Sami voters on the electoral register of the Sami Parliament. It does not refer in any way to the situation of other non-Sami individuals who also might have sought addition to the electoral register but whose cases were dismissed by the Supreme Administrative Court.

5.7 Regarding the State party's affirmation that the petitioners' claims are purely hypothetical and that they have not demonstrated that they have been individually affected by the alleged violations of articles 1 and 5 of the Convention, the petitioners indicate that the State party has not provided any legal or factual argument to support such affirmation. Furthermore, they consider that the State party's claim is in fact addressing the merits of the case, not the admissibility, which is currently under discussion. They also argue that, as the alleged violations have occurred through the 93 rulings of 30 September 2015, those rulings constitute the documentary evidence that the State party is looking for. The petitioners therefore consider that they have duly demonstrated their claims.

5.8 The petitioners add that there have been some negative developments since the submission of the communication to the Committee. They indicate that the State party has intervened in Sami affairs through the rulings of the Supreme Administrative Court to weaken the unity and power of the Sami Parliament, thereby affecting the rights of the Sami people. They refer to the bill on the Government Forestry Agency which has been enacted into a law (Act No. 234/2016),[24] ignoring the requests by the Sami people to include special consultation provisions. Moreover, a new treaty between Norway and Finland regarding the border river Teno has been finalized and is awaiting ratification. This treaty drastically reduces the Sami's traditional salmon fishing rights on both sides of the border. The petitioners also indicate that the weakened Sami Parliament has been unable to put sufficient pressure on the national Parliament and national political parties towards the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) authorization of the ratification of which remains pending before the Parliament of Finland. Furthermore, the petitioners state that the Sami Parliament, as elected in 2015, spends much of its meeting time in debates between a large majority determined to defend the rights of the Sami people and a minority willing to compromise in relation to the State party's authorities at the expense of the Sami people's rights.[25] This minority's political platform is directly related to the controversy over the definition of Sami, which is the subject of the present communication. The petitioners also

[24] See para. 3.2.

[25] The petitioners do not provide further details on this matter.

submit that the controversial issue of the definition of Sami in Finland has been used by the State party as a bargaining chip in the negotiations of the Nordic Sami Convention between Finland, Norway and Sweden, resulting in a text which, in many ways, is disappointing for the Sami people,[26] and which maintains a clause in the preamble whereby the States insist on their power to define who is Sami.[27]

5.9 The petitioners consider that the State party's affirmation that the Supreme Administrative Court has thoroughly addressed the rights of the Sami indigenous people, and that it has taken into account the obligations emanating from the Convention, is incorrect. They state that the Court issued its rulings of 30 September 2015 based entirely on its previous rulings of 2011 and on the opinion of a domestic political body, the Constitutional Law Committee of the Finnish Parliament, setting aside the concluding observations issued by the Committee in 2012.[28] The petitioners also reiterate that the Supreme Administrative Court has misunderstood the Committee's concluding observations of 2009.[29]

5.10 As for the State party's argument that it is not for the Committee to re-evaluate the facts that have led a domestic court to take a decision, the petitioners argue that they are not requesting a re-evaluation of facts, but that their allegations refer to the Supreme Administrative Court's failure to respect the rights of the petitioners, who are all members of the Sami community. They add that it is clearly within the Committee's jurisdiction to assess whether the actions of an organ of a State party, in this case, a judicial body, are incompatible with the Convention.

5.11 The petitioners further indicate that when affirming that the facts presented in the communication do not reveal any breaches of articles 1 and 5 of the Convention, the State party has not made any argument under the admissibility conditions pursuant to article 14 of the Convention. In fact, it appears that the State party has made a blanket statement, which is not supported by any legal or factual arguments, regarding the merits of the communication.

Further observations by the State party

6.1 On 29 November 2017, the State party provided information that, on 8 November 2017, the Ministry of Justice had appointed a committee to draft an amendment to the Act on the Sami Parliament (974/1995).[30] The mandate of that committee is to draft the necessary amendments to the Act, on the basis of the State's human rights obligations emanating from the Constitution, ratified international treaties and the United Nations Declaration on the Rights of Indigenous Peoples.[31] The State party indicates that the intention is for the amendments prepared by that committee to enter into force before the next elections to the Sami Parliament, which are due to be held in 2019.

6.2 In addition, the State party states that the Ministry of Justice has also appointed a parliamentary monitoring group for the period of 8 November 2017 to 30 April 2018, to support the committee in drafting the amendments to the Act. The purpose of this monitoring group is to provide all parliamentary groups with timely information about the drafting proposals, to promote a well informed and comprehensive discussion.

6.3 The State party further reiterates that the facts of the present communication do not reveal any breach of articles 1 and 5 of the Convention.

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[26] The petitioners do not provide further details on this matter.

[27] The negotiations of the Nordic Sami Convention were concluded in January 2017.

[28] See para. 3.10.

[29] See para. 3.9.

[30] The State party states that in 2012, the Ministry of Justice had appointed a working group to amend the Act on the Sami Parliament and that the Parliament of Finland considered its proposal in 2014. However, the Government withdrew the proposal in March 2015.

[31] The State party indicates that the committee will also take into account the Nordic Sami Convention and the ILO Convention No.169.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether the communication is admissible.

7.2 The Committee notes the petitioners' claim that they submit their complaint on behalf of Sami individuals and groups of individuals in Norway, the Russian Federation and Sweden, insofar as their rights have been affected by the intervention of the State party in the Sami Parliament of Finland. In particular, they allege that they have been victims of a violation of their rights under article 5 (c) of the Convention, as the Sami Parliament has powers in respect of cross-border issues. They also consider that they have been victims of a violation of their rights under article 5 (e) of the Convention, as the gradual takeover of the Sami Parliament by the mainstream Finnish population would affect the enjoyment of economic, social and cultural rights, not only of the Sami people in Finland, but also of those living across national borders, given that the Sami language is the main aspect of cohesion across national borders. The Committee notes that, according to article 14 (1) of the Convention and rule 91 (a) of the Committee's rules of procedure, it can consider communications from individuals and groups of individuals who claim to be victims of violations of the rights enshrined in the Convention and who are subject to the jurisdiction of the State party. It also notes that articles 3 and 6 of the Convention establish that States parties shall assure the rights contained in those provisions to everyone under their jurisdiction. The Committee further notes that, according to the Committee's jurisprudence, the exercise of jurisdiction is a necessary condition for a State party to be held responsible for any breach of the rights enshrined in the Convention.[32]

7.3 The Committee therefore needs to determine whether the petitioners are within the jurisdiction of the State party in order to determine if they have standing before the Committee to submit a communication. According to international law, a State party's jurisdictional competence is primarily territorial.[33] However, some acts performed or producing effects outside its territory could exceptionally constitute an exercise of jurisdiction.[34] Such exceptions refer to: (a) situations in which acts by authorities of the State party produce effects outside its own territory, for example in the case of diplomatic agents,[35] or when, through the consent, invitation or acquiescence of the Government of that territory, it exercises all or some of the public powers normally exercised by that Government;[36] and (b) when the State party exercises effective control over an area outside its territory or over persons in the territory of another State.[37] For instance, the European Court of Human Rights considers that effective control takes place in situations such as military occupation or military intervention,[38] the use of force by a State outside its territory,[39] or when a State has military, political and economic influence in another State.[40]

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[32] See for example *Diop v. France* (CERD/C/39/D/2/1989/Rev.2), para. 6.3, and *Durmic v. Serbia and Montenegro* (CERD/C/68/D/29/2003), para. 9.6.

[33] See European Court of Human Rights, *Catan and others v. Moldova and Russia* (applications Nos. 43370/04, 8252/05 and 18454/06), judgment of 19 October 2012, para. 104.

[34] See, Human Rights Committee, *Hicks v. Australia* (CCPR/C/115/D/2005/2010), para. 2.5; European Court of Human Rights, *Al-Sekeini and others v. United Kingdom* (application No. 55721/2007), judgment of 7 July 2011, para. 131; Inter-American Court of Human Rights, *Advisory Opinion on Environment and Human Rights* (OC-23/17), 15 November 2017, para. 81.

[35] See European Court of Human Rights, *Bankovic and others v. Belgium* (application No. 52207/99), judgment of 12 December 2001, para. 73.

[36] Ibid., para. 71.

[37] See Human Rights Committee, *Hicks v. Australia*, paras. 4.2–4.6. See also Inter-American Commission of Human Rights, *Aisalla Molina v. Ecuador* (case No. 112/10), decision on admissibility of 21 October 2003, para. 98.

[38] See European Court of Human Rights, *Pisari v. the Republic of Moldova and Russia* (application No. 4239/12), judgment of 21 April 2015, para. 33.

[39] See European Court of Human Rights, *Öcalan v. Turkey* (application No. 46221/99), judgment of 12 May 2005, para. 91.

7.4 The Committee notes that the information provided by the petitioners does not demonstrate that Finland would exercise any effective control over Norway, the Russian Federation or Sweden, or over the petitioners from those countries, as established in international law. The Committee also observes that, despite their claim that the Sami Parliament has powers in respect of cross-border issues, the petitioners have not shown that the acts of the authorities of the State party, including the Sami Parliament, produce effects outside its own territory, or that Norway, the Russian Federation or Sweden have consented, invited or allowed the State party to exercise all or some of the public powers normally exercised by their Governments. Consequently, the Committee considers that in accordance with article 14 (1) of the Convention, it is precluded from reviewing the claims of the petitioners, both individuals and groups of individuals, from Norway, the Russian Federation and Sweden.

7.5 The Committee further notes the State party's argument that the petitioners have not complied with rule 91 (b) of the Committee's rules of procedure, as they have not provided written authorizations indicating that a communication could be submitted to the Committee on their behalf. However, the Committee observes that the petitioners have provided copies of 23 written authorizations indicating each petitioner's support to the communication and accepting the representation of the counsel.

7.6 The Committee further notes that the petitioners indicate that they submit the communication acting on their individual capacity as affected Sami and that many of them act on behalf of different Sami associations to which they belong, as well as on behalf of the members of these associations. The Committee recalls its jurisprudence, according to which the fact that an author of a communication is an organization does not constitute an obstacle to admissibility,[41] as groups of individuals can submit communications to the Committee, in accordance to article 14 (1) of the Convention and article 91 (a) of the Committee's rules of procedure. The Committee notes, however, that the petitioners do not specify who among them submits the communication on behalf of a Sami organization. In the case of Ms. Nuorgam, the Committee notes the information provided by the petitioners that she is the head of the Human Rights Unit of the trans-border association Saami Council and that, as such, she represents that organization.[42] However, the Committee also notes that the petitioners do not provide any information to demonstrate that Ms. Nuorgan's mandate provides her with the standing to submit a complaint on behalf of the Saami Council as a whole. In view thereof, and bearing in mind its reasoning regarding its competence *ratione loci*,[43] the Committee considers that the communication is admissible under article 14 (1) of the Convention only with respect to those petitioners who are Finnish and acting in their individual capacity.

7.7 The Committee further notes the State party's argument that the communication submitted by the President of the Finnish Sami Parliament to the Human Rights Committee concerns exactly the same matter as the present communication and that, therefore, those Sami citizens of Finland who are petitioners of the present communication should not be included among the petitioners of a communication on the same matter being examined simultaneously by another treaty body, taking into account that all Sami citizens of Finland should be considered as represented by the President of the Finnish Sami Parliament. The Committee also notes the petitioners' statement that there is no provision in article 14 of the Convention or rule 91 of the rules of procedure preventing petitions relating to the same matter from being submitted to more than one treaty body, and that even assuming that such rule was applicable, the matter covered by the present communication is not the same as the one covered by the communication submitted by the president of the Finnish Sami Parliament to the Human Rights Committee. In this connection, the Committee notes that

[40] See European Court of Human Rights, *Ivantoţoc and others v. Moldova and Russia* (application No. 23687/05) judgment of 15 November 2011, paras. 105–106; European Court of Human Rights, *Ilaşcu and others v. Moldova and Russia* (application No. 48787/99), judgment of 8 July 2004, paras. 314–317.

[41] See *Zentralat Deutscher Sinti und Roma et al. v. Germany* (CERD/C/72/D/38/2006) para. 7.2; *The Jewish Community of Oslo et al. v. Norway* (CERD/C/67/D/30/2003) para. 7.4.

[42] See para. 5.2.

[43] See paras. 7.3–7.4.

even if the two communications relate to Supreme Administrative Court of Finland's rulings of 30 September 2015 and refer to the violations caused by these rulings to the rights of the Sami, the legal provisions invoked in both complaints are different as they relate to two different treaties and the petitioners are different.

7.8 The Committee recalls that neither the Convention nor the Committee's rules of procedure prevent the Committee from examining a case which is also being considered by another international body.[44] However, it also notes that the State party has introduced a reservation to article 14 of the Convention, according to which the Committee should not consider any communication from an individual or a group of individuals unless it has ascertained that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement.[45] The Committee must therefore determine whether the complaint submitted to the Human Rights Committee addresses the same matter under the terms of the reservation made by the State party. In that respect, the Committee considers that a complaint will be qualified as "the same matter" if it relates to the same parties, the same events and the same substantive rights.[46] In the present case, the Committee observes that the petitioners allege the violation of their rights under article 1 of the Convention, as the rulings of 30 September 2015 have the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of their human rights and fundamental freedoms as indigenous peoples in the political, economic, social, cultural or any other field of public life. It also notes the petitioners' claim that such rulings will gradually result in the forced assimilation of the Sami people into the mainstream population, also in violation of article 1 of the Convention. The Committee further notes the petitioners' claim that their rights under article 5 (a), (c) and (e) of the Convention have been violated by the State party. The Committee observes that such provisions of the Convention relate to the right to equal treatment before the tribunals and all other organs administering justice, and the right not to be racially discriminated against in relation to political rights and in relation to economic, social and cultural rights. The Committee also observes that in the communication submitted by the president of the Finnish Sami Parliament to the Human Rights Committee, the authors allege the violation of their rights under articles 1, 25, 26 and 27 of the International Covenant on Civil and Political Rights. The Committee notes that such provisions relate to the right to self-determination, the protection of political rights and of minority rights, and equality before the law. The subject matter of the present communication is therefore different to the issues submitted to the Human Rights Committee. In addition, the Committee notes that the petitioners of the present communication and those of the communication submitted to the Human Rights Committee are different. Accordingly, the Committee considers that it is not precluded from considering the petitioners' complaints relating to articles 1 and 5 (a), (c) and (e) of the Convention.

7.9 The Committee notes the State party's argument that the petitioners did not exhaust all available domestic remedies, as they did not request the Supreme Administrative Court to annul its decision through an extraordinary appeal. The Committee also notes the petitioners' claim that requiring the exhaustion of an extraordinary remedy is unreasonable and does not reflect the exhaustion of domestic remedies as understood in international law. It further notes that, according to the petitioners, an extraordinary appeal to the Supreme Administrative Court would have no prospect of success, as demonstrated by the Court's ruling of 13 June 2016 in which it refused to assess its rulings of 30 September 2015. The Committee notes that the Supreme Administrative Court is the highest appellate court for administrative matters. Additionally, the State party does not provide any argument that would enable the Committee to conclude that such an appeal would have had any chance of

[44] See for example *Kaptova v. Slovakia* (CERD/C/57/D/13/1998), para. 6.3.

[45] See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en#EndDec.

[46] See Human Rights Committee, *Aarrass v. Spain* (CCPR/C/111/D/2008/2010), para. 9.4, and *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 8.4; Committee against Torture, *E.E. v. Russian Federation* (CAT/C/50/D/479/2011), para. 8.4; *S v. Sweden* (CAT/C/59/D/691/2015), para. 7.3; Committee on Economic, Social and Cultural Rights, *Merino Sierra and Merino Sierra v. Spain* (E/C.12/59/D/4/2014), para. 6.4.

success. The Committee therefore concludes that the appeal referred to by the State party constitutes an extraordinary remedy that does not have to be exhausted for purposes of admissibility in compliance with article 14 (7) (a) of the Convention.[47]

7.10 The Committee further notes the State party's argument that the petitioners have not exhausted the domestic remedies because they were not involved in the appeal proceedings of those who were not considered eligible to be included on the Sami Parliament electoral register by the rulings of 30 September 2015. The Committee, however, notes the petitioners' allegation that they have made no claim to represent those individuals, who are not Sami. In view thereof, the Committee considers that the petitioners have complied with the conditions established by article 14 (7) (a) of the Convention regarding the exhaustion of domestic remedies.

7.11 The Committee also notes the State party's argument that the petitioners are claiming indirect or hypothetical violations of the Sami people's rights in general and not violations of their individual rights, as they have not been able to demonstrate having been directly affected by the alleged violations and that, therefore, the communication should be declared inadmissible for lack of substantiation. The Committee also notes the petitioners' allegation that they have duly demonstrated their claims, as the 93 rulings issued by the Supreme Administrative Court constitute the evidence of the violations alleged. It also notes their claim that the argument submitted by the State party in that regard is directly linked to the merits of the case, and that, therefore, it should not be examined in detail in the present decision related to the admissibility of the case. The Committee recalls that, according to article 14 (1) of the Convention and rules 91 (a) and (b) of the Committee's rules of procedure, it can consider communications from individuals and groups of individuals within the jurisdiction of the State party who claim to be victims of violations of the rights established in the Convention. The Committee notes that it is undisputed that the Sami Parliament is the institution that guarantees the Sami linguistic and cultural self-government within the Sami homeland area and that it may have initiatives and make proposals to the State authorities, as well as issue statements. The Committee, therefore, considers that decisions taken by institutions of the State party, which have an impact on the composition of the Sami Parliament and the equal representation of the Sami, can have a direct impact on the civil, political, economic, social and cultural rights of individual members of the Sami community and of groups of Sami individuals, in the terms of article 14 (1) of the Convention. The Committee considers, therefore, that, for the purpose of admissibility, it is not precluded, under article 14 (1) of the Convention, from examining the present communication with respect to the petitioners' claims regarding articles 1 and 5 (a), (c) and (e) of the Convention.

8. The Committee therefore decides:

(a) That the petition is admissible with regard to the petitioners who are under the jurisdiction of the State party, in their individual capacity;

(b) In accordance with article 14 (6) of the Convention, to request the State party to submit to the Committee, within three months of the date of transmittal of the present decision on admissibility, written explanations or statements clarifying the merits of the case, as well as any relevant information as to the remedy, if any, that may have been taken by the State party with regard to the petitioners and the issues at stake;

(c) That any explanations or statements received from the State party shall be communicated to the petitioners under rule 94, paragraph 4, of the Committee's rules of procedure, with the request that any comments they may wish to make thereon should reach the Committee, in care of the Office of the United Nations High Commissioner for Human Rights, within six weeks of the date of transmittal;

(d) That the present decision shall be communicated to the State party and to the petitioners.

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[47] See for example Human Rights Committee, *Adam v. Czech Republic* (CCPR/C/57/D/586/1994), para. 11.2, and *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), para. 9.3.